

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 05-0019P

**Income Tax
For Tax Year 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Income—Overpayment Application

Authority: IC 6-3-4-4.1; IC 6-8.1-9-2

Taxpayer protests that the Department misapplied overpayment credits resulting in proposed assessments of income tax due.

II. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent (10%) negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an out-of-state business doing business in Indiana. The Indiana Department of Revenue ("Department") conducted an audit and issued proposed assessments for income tax, penalty and interest for 2001. Taxpayer protests the assessments. Further facts will be supplied as required.

I. Income—Overpayment Application

DISCUSSION

Taxpayer had an overpayment credit available on its 2001 return. Taxpayer asked that the full amount of the overpayment credit be carried forward to 2002. As the result of an audit, the Department determined that taxpayer had an outstanding withholding tax liability due to unfiled returns from 1999. Taxpayer subsequently filed the returns and the Department returned the overpayment credit to the 2001 corporate return and applied the overpayment to the 1999 deficiencies. The remaining portion of the overpayment was carried forward to 2002 as requested by taxpayer. As the result of another audit, the Department determined that taxpayer

owed additional taxes for 2001. The Department issued a proposed assessment for the base liability along with penalty and interest.

Taxpayer protests that it should be allowed to take the overpayment which it had previously requested to have applied as a credit to 2002 and have it reapplied back to 2001, which would cover the underpayment. This is not the correct method. IC 6-3-4-4.1(d) states:

Every corporation subject to the adjusted gross income tax liability imposed by IC 6-3 shall be required to report and pay an estimated tax equal to twenty-five percent (25%) of such corporation's estimated adjusted gross income tax liability for the taxable year, less the credit allowed by IC 6-3-3-2 for the tax imposed on gross income. Such estimated payment shall be made at the same time and in conjunction with the reporting of gross income tax as provided in IC 6-2.1-5. The department shall prescribe the manner and forms for such reporting and payment.

Also of significance is IC 6-8.1-9-2, which states in relevant part:

(a) If the department finds that a person has paid more tax for a taxable year than is legally due, the department shall apply the amount of the excess against any amount of that same tax that is assessed and is currently due. The department may then apply any remaining excess against any of the listed taxes that have been assessed against the person and that are currently due. If any excess remains after the department has applied the overpayment against the person's tax liabilities, the department shall either refund the amount to the person or, at the person's request, credit the amount to the person's future tax liabilities.

Since taxpayer elected to have the 2001 overpayment applied to 2002 under IC 6-8.1-9-2(a), that credit became part of the 2002 estimated payments required by IC 6-3-4-4.1. Once the payment for 2002 was made, it was made. The Department is not a quasi-financial institution and the overpayment for 2001 was not a floating deposit in an "account" at such an institution. Once taxpayer elected to apply the overpayment to 2002, the application ended the availability of the credit. When the audit revealed the liabilities for 2001, the previous overpayment credit had already been applied to 2002 and no longer existed.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Negligence Penalty and Interest

DISCUSSION

The Department issued proposed assessments and the ten percent (10%) negligence penalty for the tax years in question. Taxpayer protests the imposition of penalty. The Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer has not established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

IC 6-8.1-10-1(e) states that the Department may not waive interest. However, in discussions with taxpayer prior to the writing of this Letter of Findings, the Department determined that it had miscalculated the interest. The Department agreed to recalculate the interest, which will result in a lesser amount of interest. Under IC 6-8.1-10-1(e), the interest may not be waived.

FINDING

Taxpayer's protest is denied.

WL/JM 050510